

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING  
2012 MAR 21 PM 2 19  
STEPHAN HARRIS, CLERK  
CHEYENNE

Jason M. Tangeman, WSB No. 6-3128  
Mitchell H. Edwards, WSB No. 6-3880  
Nicholas & Tangeman, LLC  
170 North Fifth Street  
PO Box 0928  
Laramie, WY 82073-0928  
(307) 742-7140  
Fax: (307) 742-7160

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

MICHAEL A. DURLACHER and DAVID L. DURLACHER )  
Co-Personal Representatives of the Estate of )  
LINDSEY C. DURLACHER, )

Plaintiff, )

vs. )

ROCKY WAYNE HOFFSCHNEIDER and )  
JOHN DOES 1-10 )

Defendants. )

Civil Action No. \_\_\_\_\_

**12CV059 -J**

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**COMPLAINT**

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Plaintiff, by and through their attorneys, Nicholas & Tangeman, LLC complain as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1367 since diversity exists between plaintiff, on the one hand, and the defendants, on the other hand, and in the amount in controversy is in excess of \$75,000.00.

2. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391 as it is where the acts giving rise to the claim occurred.

**GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. Co-Personal Representative Michael A. Durlacher is the brother of the deceased, Lindsey C. Durlacher. At the time of Lindsey's death Michael Durlacher was a resident of Vernon Hills, Illinois 60061.

2. Co-Personal Representative David L. Durlacher is the other brother of the deceased Lindsey Durlacher. At the time of Lindsey's death David Durlacher was a resident of Mundelein, Illinois.

3. On March 12th, 2012 the District Court for the Second Judicial District, County of Albany, State of Wyoming, Civil Action No. 32405, appointed Michael A. Durlacher and David L. Durlacher as co-personal representatives for the purpose of prosecuting wrongful death claims and for such other claims that may arise in the alternative on behalf of the beneficiaries of Lindsey C. Durlacher. (Exhibit A attached).

4. Plaintiff is of information and belief that at the time of the accident and death of Lindsey C. Durlacher, Defendant Rocky Wayne Hoffschneider was a resident of Denver, Colorado.

5. On February 12, 2011, Lindsey Durlacher was snowmobiling at Ryan Park near Wyoming Highway 130, four miles west of Lake Marie in Albany County, Wyoming.

6. At approximately 12:30 p.m., defendant Rocky Hoffschneider recklessly and/or negligently drove his snowmobile at a high rate of speed into the back end of the snowmobile being driven by Lindsey Durlacher who was sitting stationary on the snowmobile at the time defendant drove into him.

7. As a result of the impact from the high speed collision, Lindsey Durlacher's helmet came off and he was thrown up in the air off his snowmobile, landing on his head, neck and shoulders on the ground.

8. Lindsey Durlacher suffered serious injuries as a result of the collision.

9. On June 4, 2011 Lindsey Durlacher died as a result of the injuries sustained by him and as described above.

10. Dr. Amy Martin is the Chief Medical Examiner for the City and County of Denver.

11. On July 14, 2011 Dr. Martin executed and filed a Certificate of Death for Lindsey Durlacher a copy of which is attached and incorporated by reference. (Exhibit B).

12. Dr. Martin concluded that the manner of death was "accident" which occurred in an "outdoor area" in "Snowy Range/Albany/Wyoming." (Id.)

13. Dr. Martin described the injury as occurring while Lindsey was an "operator of snowmobile" who was "reportedly rear ended by another snowmobile." (Id.)

14. Dr. Martin concluded that "blunt trauma to the chest" was one of the "conditions which gave rise to immediate cause" of death. (Id.)

15. Dr. Martin further concluded that the cause of death was "accident." (Id.)

#### **FIRST CLAIM FOR RELIEF – WRONGFUL DEATH**

16. Plaintiff incorporates by reference all preceding allegations of the Complaint.

17. This first claim for relief is brought pursuant to the provisions of the Wyoming Wrongful Death Act, W.S. §§ 1-38-101 and 1-38-102.

18. Defendant Hoffschneider owed plaintiff Durlacher a duty to operate his

snowmobile in a reasonably safe, and proper manner and with due care under the circumstances.

19. Defendant Hoffschneider owed plaintiff Durlacher a duty to operate his snowmobile in compliance with all state statutes and laws.

20. Defendant Hoffschneider breached these duties by operating his snowmobile by recklessly and/or negligently driving his snowmobile at a high rate of speed into the back end of the snowmobile being driven by Lindsey Durlacher who was sitting stationary on his snowmobile at the time defendant drove into him.

21. As a result of defendant Hoffschneider's reckless and/or negligent actions plaintiff Lindsey Durlacher died.

22. The family and beneficiaries of the Estate of Lindsey Durlacher have suffered damages in an amount to be proven a trial.

**SECOND CLAIM FOR RELIEF ALLEGED IN THE ALTERNATIVE  
PERSONAL INJURY SURVIVAL ACTION**

23. Plaintiff incorporates by reference all preceding allegations of the Complaint.

24. This second claim for relief alleged in the alternative is brought pursuant to the provisions of Wyoming's Abatement and Survival statutes, W.S. § 1-4-101, et seq.

25. Defendant Hoffschneider owed plaintiff Durlacher a duty to operate his snowmobile in a reasonably safe, and proper manner and with due care under the circumstances.

26. Defendant Hoffschneider owed plaintiff Durlacher a duty to operate his snowmobile in compliance with all state statutes and laws.

27. Defendant Hoffschneider breached these duties by operating his snowmobile by

recklessly and/or negligently driving his snowmobile at a high rate of speed into the back end of the snowmobile being driven by Lindsey Durlacher who was sitting stationary on his snowmobile at the time defendant drove into him.

28. As a result of defendant Hoffschneider's reckless and/or negligent actions plaintiff Lindsey Durlacher suffered serious bodily injuries.

WHEREFORE Plaintiff demands the following relief, to be entered against all defendant(s):

a. Wrongful Death

- i. Judgment against defendant(s) for their compensatory damages, including their general and special damages of all persons entitled to recover in amounts to be proven at trial;
- ii. Judgment against all defendant(s) for exemplary or punitive damages in fair and reasonable amounts, based upon those Defendants' net worth and in amounts to be proven a trial;
- iii. Judgment against all defendant(s) for Plaintiffs' costs and attorneys' fees in an amount to be proven at trial;
- iv. interest on all liquidated damages at the statutory rate of eight percent (8%) per annum from the date of loss;
- v. interest at the statutory rate of eight percent (8%) per annum on any sums awarded by judgment herein, and;
- vi. Such other and further relief as the Court deems just and equitable.

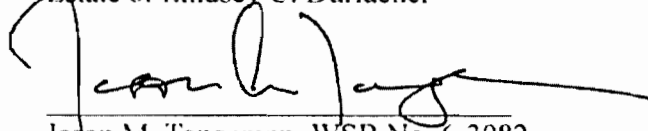
b. Personal Injury (In the alternative)

- i. General and special damages including, but not limited to, medical expenses;
- ii. loss of income;
- iii. pain and suffering;
- iv. loss of enjoyment of life;

- v. emotional and mental injury;
- vi. physical impairment;
- vii. exemplary or punitive damages in fair and reasonable amounts, based upon those Defendants' net worth and in amounts to be proven a trial;
- viii. all allowable costs, expenses and attorneys fees incurred in the prosecution of this action;
- ix. interest on all liquidated damages at the statutory rate of eight percent (8%) per annum from the date of loss;
- x. interest at the statutory rate of eight percent (8%) per annum on any sums awarded by judgment herein;
- xi. all other compensable costs and injuries proved at trial in such sum as is deemed appropriate by a jury; and
- xii. such other and further relief as the Court deems just and equitable.

DATED this 21<sup>st</sup> day of March, 2012.

Estate of Lindsey C. Durlacher



Jason M. Tangeman, WSB No. 6-3082  
Philip A. Nicholas, WSB No. 5-1785  
Stacy L. Rostad, WSB No. 6-3592  
Mitchell H. Edwards, WSB No. 6-3880  
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Laramie, WY 82073-0928  
(307) 742-7140  
Fax: (307) 742-7160  
Attorneys for the Plaintiff

STATE OF WYOMING )  
 ) ss.  
 COUNTY OF ALBANY )

IN THE DISTRICT COURT  
 SECOND JUDICIAL DISTRICT  
 Civil Action No. 2012-32405

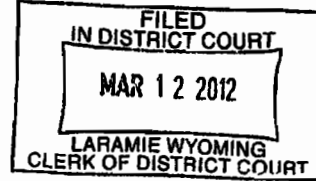
MICHAEL DURLACHER and DAVID DURLACHER, )  
 Co-Personal Representatives of the Estate of )  
 LINDSEY C. DURLACHER, )

Plaintiff,

vs.

ROCKY WAYNE HOFFSCHNEIDER )  
 and JOHN DOES 1-10 )

Defendants. )



**ORDER APPOINTING CO-PERSONAL REPRESENTATIVES OF THE WRONGFUL  
 DEATH CLAIMS OF LINDSEY C. DURLACHER**

THIS MATTER, having come before the Court upon Verified Petition to Appoint Michael A. Durlacher and David L. Durlacher as Co-Personal Representatives of the Wrongful Death Claims of Lindsey C. Durlacher and the Court having reviewed the Petition and being duly advised in the premise,

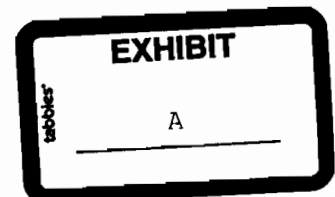
**THE COURT HEREBY FINDS AS FOLLOWS:**

1. On June 4, 2011 Lindsey C. Durlacher died as a result of the injuries sustained by him and as described above.
2. At the time of the accident and his death Lindsey Durlacher was a resident of Denver, Colorado.
3. At the time of the accident and the death of Lindsey Durlacher defendant Rocky Wayne Hoffschneider was a resident of Denver, Colorado.
4. At the time of his death Lindsey Durlacher was unmarried and left no surviving children or descendants.
5. Due search and inquiry have been made to ascertain if Lindsey Durlacher left any Last Will and Testament, but none has been found, and according to the best knowledge, information and belief of Petitioners, Lindsey Durlacher died intestate.
6. To the best of knowledge of Petitioners the next of kin of Lindsey and heirs at law are:

<u>Name</u>	<u>Age</u>	<u>Address</u>
Richard Durlacher (father)	77	8841 Ewing Skokie IL
Barbara Durlacher (mother)	70	2926 Windsor, Arl. Hts IL
Michael Durlacher (brother)	41	2 White Barn, Vernon Hills IL
David Durlacher (brother)	43	586 Yardley Trail, Mundelien IL

7. *In Re Estate of Johnson*, 231 P.2d 873, 879-881 *In Re Estate of Johnson*, 231 P.2d 873 (Wyo. 2010) the Wyoming Supreme Court held:

The appointment of a personal representative is a discretionary act, which discretion should be informed by a review of the purposes of the statute, and by a review of the qualifications of the petitioner in relation to those purposes. In particular, because the personal representative will act as a



trustee on behalf of the beneficiaries, inquiry should be made into the relationship of the petitioner to the beneficiaries.

\* \* \*

Even though it is not controlling, one of the factors the district court should consider, particularly if the proposed appointment is contested, is the priority list contained in Wyo. Stat. Ann. § 2-4-201(a). That statutory list reflects legislative policy as to the order of significant human relationships, and as such, it is a useful tool in considering suitability to act as personal representative. Because the filing of a wrongful death action presupposes that the personal representative intends to pursue a civil action against the alleged wrongdoer, the district court should also consider the petitioner's financial and physical ability to do so, his or her geographic location, his or her intentions in regard to legal representation, and his or her stake in the outcome. Given the potential in a wrongful death action that a multitude of claimants may be coupled with a limited damages recovery, the issue of family harmony or disharmony may likewise be important in the selection of a personal representative.

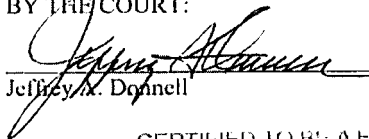
*In re Estate of Johnson*, 2010 WY 63, 231 P.3d 873, 879-881 (citations omitted) (Wyo. 2010)

8. Co-Petitioner Michael Durlacher is the brother of Lindsey Durlacher. He is an attorney with offices in Chicago, Illinois and Elgin Illinois.
9. At the time of Lindsey Durlacher's accident and death he was a resident of Vernon Hills, Illinois, 60061.
10. Michael Durlacher and his brother Lindsey remained close throughout their lives.
11. Co-Petitioner David Durlacher is also the brother of Lindsey Durlacher. He is a sales representatives and high school and youth wrestling coach.
12. At the time of Lindsey Durlacher's accident and death David Durlacher was a resident of Mundelein, Illinois
13. David Durlacher and Lindsey Durlacher remained close throughout their lives.
14. Richard and Barbara Durlacher, parents of Lindsey Durlacher, have asked that their two remaining sons David and Michael to act as co-personal representatives on behalf of the family. Richard and Barbara are also residents of Illinois.
15. Michael and David Durlacher are in the best financial and physical condition and geographic position to prosecute wrongful death claims on behalf of beneficiaries of the wrongful death estate of Lindsey Durlacher.

WHEREFORE, IT IS HEREBY ORDERED that Michael A. Durlacher and David L. Durlacher are appointed as co-personal representatives for the purposes of prosecuting wrongful death claims on behalf of the beneficiaries of Lindsey C. Durlacher and any other claims that may arise in the alternative.

DATED this 12<sup>th</sup> day of March, 2012.

BY THE COURT:

  
Jeffrey A. Donnell

Certified Copies (2) to:

Nicholas & Tangeman, LLC  
P.O. Box 928  
Laramie, WY 82073

CERTIFIED TO BE A FULL  
TRUE, AND CORRECT COPY

JANICE SEXTON  
Clerk of District Court

  
Deputy

COPIES FILED  
AS INDICATED:  
DATE: 3/12/12  
CLERK: ut



07/19/2011 15:48 FAX

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## CERTIFICATION OF VITAL RECORD

# STATE OF COLORADO

## COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### HOLD TO LIGHT TO SEE WATERMARK

### CERTIFICATE OF DEATH

STATE FILE NUMBER

Amended

**2065**

1 DECEASED'S NAME (Print, Middle, Last) <b>Lindsey DURLACHER</b>		2 SEX <b>Male</b>	3 DATE OF DEATH (Month, Day, Year) <b>June 4, 2011</b>
4 AGENCY SECURITY NUMBER <b>324-60-1695</b>	5a AGE (Month, Year) <b>35</b>	5b UNDER 1 YEAR <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5c UNDER 1 DAY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6a PLACE OF DEATH (Street and number) <b>2301 Cleveland Place, #202</b>		6b CITY/TOWN OR LOCATION OF DEATH <b>Denver</b>	
6c COUNTY OF DEATH <b>Denver</b>		7. DECEASED'S PLACE (City and State or Foreign Country) <b>Evanston, IL</b>	
8a DECEASED'S USUAL OCCUPATION (Give kind of work done during most of working life) <b>Athlete</b>		8b KIND OF BUSINESS/INDUSTRY <b>Wrestling</b>	
9a DECEASED'S MARITAL STATUS (Married, Never Married, Widowed, Divorced, Annulled) <b>Never Married</b>		9b POLICE or other photo (attach separate)	
10a RESIDENCE - STATE <b>IL</b>	10b CITY/TOWN OR LOCATION <b>Cook</b>	10c STREET AND NUMBER <b>2926 N. Windsor Dr.</b>	10d ZIP CODE <b>60004</b>
11a DECEASED'S EDUCATION (Specify grade completed) <b>16</b>	11b DECEASED'S EDUCATION (Specify grade completed) <b>16</b>	11c DECEASED'S EDUCATION (Specify grade completed) <b>16</b>	
12a FATHER'S NAME (Print, Middle, Last) <b>Richard Durlacher</b>		12b MOTHER'S NAME (Print, Middle, Last) <b>Barbara Brodsky</b>	
13a METHOD OF DEATH (Natural, Accidental, Suicide, Homicide, Unknown) <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Unknown		13b PLACE OF DEATH (Specify location of death, including street, city, state, and country) <b>Sheldon Memorial Park, Arlington Heights, IL</b>	
14a DECEASED'S SIGNATURE (Print, Middle, Last) <b>Richard Durlacher</b>		14b NAME AND ADDRESS OF PHYSICIAN (Print, Middle, Last) <b>1473 York Street, Denver, CO</b>	
15a DATE OF DEATH (Month, Day, Year) <b>June 4, 2011</b>		15b DATE FILLED (Month, Day, Year) <b>Jul 14 2011</b>	
16a TIME OF DEATH (Hour, Minute) <b>9:29 AM</b>		16b TIME OF DEATH (Hour, Minute) <b>9:29 AM</b>	
17a TO BE COMPLETED ONLY BY CERTIFIED PHYSICIAN (Print, Middle, Last) <b>Dr. Ronald S. Hyman</b>		17b TO BE COMPLETED ONLY BY CERTIFIED PHYSICIAN (Print, Middle, Last) <b>Dr. Ronald S. Hyman</b>	
18a DATE SIGNED (Month, Day, Year) <b>July 12, 2011</b>		18b DATE SIGNED (Month, Day, Year) <b>July 12, 2011</b>	
19a NAME, TITLE AND MAILING ADDRESS OF CERTIFYING PHYSICIAN (Print, Middle, Last) <b>Any Martin, M.D., Chief Medical Examiner, Denver Center, 660 Bannock Street, Denver, Colorado, 80204</b>		19b NAME OF ATTENDING PHYSICIAN OR OTHER HEALTH IDENTIFIER (Print, Middle, Last) <b>Any Martin, M.D., Chief Medical Examiner, Denver Center, 660 Bannock Street, Denver, Colorado, 80204</b>	
20a MANNER OF DEATH (Natural, Accidental, Suicide, Homicide, Unknown) <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Unknown	20b DATE OF INJURY (Month, Day, Year) <b>1/31 or 2/1/2011</b>	20c TIME OF INJURY <b>Unknown</b>	20d DESCRIBE HOW INJURY OCCURRED <b>Operator of snowmobile reportedly rear ended by another snowmobile</b>
21a PLACE OF INJURY (Street and number or Rural Route Number, City, County, State) <b>Outdoor Area</b>	21b LOCATION (Street and number or Rural Route Number, City, County, State) <b>Scoville Range / Albany / Wyoming</b>	21c LOCATION (Street and number or Rural Route Number, City, County, State) <b>Scoville Range / Albany / Wyoming</b>	
22a IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE ITEM, DO NOT) (Do not enter cause of dying e.g. Cardiac or Respiratory Arrest) <b>ACUTE BRONCHOPNEUMONIA</b>		22b IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE ITEM, DO NOT) (Do not enter cause of dying e.g. Cardiac or Respiratory Arrest) <b>UNKNOWN</b>	
23a CONDITIONS OF ANY WOUND (GIVE RISE TO IMMEDIATE CAUSE) <b>POST-OPERATIVE STERNAL FRACTURE</b>		23b CONDITIONS OF ANY WOUND (GIVE RISE TO IMMEDIATE CAUSE) <b>INTERNAL FLEXION OF STERNAL FRACTURE</b>	
24a OTHER SIGNIFICANT CONDITIONS (Conditions contributing to death but not related to cause in Part 1) (e.g., diabetes, obesity, cancer) <b>Puncture of pericardial sac with focal pericarditis and small hemothorax with bloody effusion.</b>		24b OTHER SIGNIFICANT CONDITIONS (Conditions contributing to death but not related to cause in Part 1) (e.g., diabetes, obesity, cancer) <b>Puncture of pericardial sac with focal pericarditis and small hemothorax with bloody effusion.</b>	
25a AUTOPSY (Yes or No) <b>Yes</b>		25b IF YES, DATE OF AUTOPSY (Month, Day, Year) <b>Yes</b>	

DATE ISSUED

JUL 14 2011

THIS IS A TRUE CERTIFICATION OF NAME AND FACTS AS RECORDED IN THIS OFFICE. Do not accept unless prepared as security paper with engraved border displaying the Colorado state seal and signature of the Registrar. PENALTY BY LAW, Section 25-2-118, Colorado Revised Statutes, 1982. If a person utters, uses, attempts to use or furnishes to another for deceptive use any vital statistics record, NOT VALID IF PHOTOCOPIED.

*Ronald S. Hyman*  
RONALD S. HYMAN  
STATE REGISTRAR

005206850  
REV 01/07

EXHIBIT

B

DURLACHER 1143